

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FIFTY YEARS IS ENOUGH, ET AL.,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, ET AL.,

Defendants.

Civil Action No. 01-0811 (JMF)

MEMORANDUM OPINION

This matter has been referred to me for the management of discovery under LCvR 73.1.

The parties have narrowed their differences as to a proposed protective order, but still disagree as to the following: (1) the definition of the scope of the order; (2) access to the protected information by witnesses for one party or another; and (3) prior disclosure of an intention to place protected materials in the court's public record.

As to the first, I have attempted to find a middle ground between the federal defendants' objection to plaintiff's supplementation regarding the scope of the order and plaintiffs' desire for it. Defendants insist that defining the scope of the order any more broadly than the material being subject to the Privacy Act is unnecessary. But, I can imagine a situation, albeit unlikely, where information that should not be publicly disclosed could be revealed by discovery but still not be subject to the Privacy Act. I have, therefore, defined the scope of the order to allow for such a possibility.

Second, while witnesses should not be absolutely precluded from seeing material subject to the order, there is simultaneously no reason for an absolute right of access, independent of any need to prepare for trial or a deposition. I, therefore, insist upon a reasonable basis for counsel's refusing to permit access by anyone designated by opposing counsel, including witnesses. An unreasonable refusal would be a violation of the Order to be remedied by the Court upon application by either party.

Third, I do not quite understand why plaintiffs seek ten days within which to review any document defendants intend to designate as subject to the order. The Order requires either party to designate information disclosed by the discovery process as subject to the order and expressly permits either to object to the other's designation. I see no need to subject this process to any specific deadline.

I, therefore, issue the following Protective Order:

PROTECTIVE ORDER

1. This order pertains only to information:
 - a. That may be within the scope of the provisions of the Privacy Act;
 - b. That falls within narrowly defined types of information, yet to be identified, for which good cause exists to protect it from disclosure;
 - c. That would cause a reasonable person to believe that its disclosure would subject him or her to an invasion of privacy;
 - d. That tends to accuse any person of a criminal or morally reprehensible act.

Therefore, it is, hereby,

ORDERED, that whenever counsel for a party believes that formal or informal discovery in this case, in whatever form, may reveal or has revealed information that may be within these categories, the following procedures shall be followed.

1. Counsel shall designate the information as subject to this Order by mailing a letter to the opposing counsel. Upon request, counsel will promptly explain the basis for designating material as being subject to the Protective Order.

2. The parties shall not file discovery materials, including interrogatories, answers thereto, document requests, responses thereto, requests for admission, responses thereto, declarations, affidavits or deposition transcripts containing information subject to this Order with the clerk. If either party files any motion, opposition, reply or anything else prior to trial and attaches thereto or sets forth therein any information that has been designated as subject to this Order, that party shall file two copies of such filing (“Version One” and “Version Two”) with the clerk. Version One shall contain no redactions and shall be filed in the Clerk’s office in sealed envelopes on which shall be endorsed the title to this action, a brief description of the contents of such sealed envelope or container, the words “under seal,” and a statement substantially in the following form:

This envelope contains documents which have been filed in this case by [name of party] and is not to be opened except pursuant to order of the Court.

No later than two business days thereafter, a copy of the filing (“Version Two”) shall be filed on

the public record which redacts only the specific information designated as protected pursuant to paragraph one of this Order.

3. The right of access to all materials designated as subject to this order (unless the parties have agreed otherwise or the Court enters an order permitting disclosure) shall be limited to the parties, counsel for parties, consultants to the parties, paralegals, and expert witnesses in their employ or any other person mutually authorized by all counsel to examine such materials. Counsel must be reasonable in denying a party the right to allow others, such as witnesses, to examine the protected material. Counsel must give a reasonable explanation for the denial. Any persons having access to information subject to this Order shall be informed that it is confidential and subject to a non-disclosure Order of the Court.

4. Except as provided herein, no person having access to material designated as subject to this Order shall reveal to any person not named in paragraph three any information contained in such material without further Order of the Court or stipulation of the parties, provided however, that nothing contained herein shall restrict the government's use of its records for official business or for other purposes consistent with the Privacy Act and other applicable laws and regulations. Nothing in this Order shall be deemed to prevent any person from disseminating information obtained from any source independent of the protected materials.

5. All documents and copies of documents designated as subject to this Order shall be destroyed or returned to counsel for the producing party within sixty (60) days of the conclusion of the trial and appellate proceedings in this case. If the documents are destroyed, the opposing counsel shall notify the producing party's counsel in writing.

6. Nothing contained in this Order shall be construed as precluding plaintiffs or defendants from introducing materials that are subject to this Order, or the contents thereof, into evidence at the trial of this case. If however, these documents are to be used at trial, the Court may determine and direct at that time the extent to which confidentiality shall be protected.

7. Any specific part or parts of the restrictions imposed by this protective order may be terminated at any time by a letter from counsel for the party waiving benefit of the Protective Order or by an Order of the Court. This Order is without prejudice to the rights of any party to make any objection to discovery permitted by the Federal Rules of Civil Procedure, or by any party to make evidentiary objections at trial.

8. This Order is without prejudice to the rights of any party to seek modifications of this Order from the Court. If either party disagrees with the other's designations and if the parties are unable to resolve the disagreement, either party may seek an order from this Court, either to remove the disputed material from protection or to declare such material as protected upon good cause shown.

9. All discovery material produced by defendants shall be provided solely to counsel at Partnership for Civil Justice, 1901 Pennsylvania Avenue, Suite 607, Washington, D.C., 20006.

JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated: